

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2543 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MULCHANDBHAI MANIBHAI PATEL

Versus

COMPETENT AUTHORITY AND ADDL COLLECTOR

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Appearance:

MR MC BHATT for Petitioners

MR BY MANKAD, GOVERNMENT PLEADER for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/06/98

ORAL JUDGEMENT

Rule.

In the facts and circumstances of the case, this petition is taken up for final hearing today.

2. The petitioners hold land ad-measuring 21 gunthas in S.No.422/1 situated in the sim of village Chandkheda, District Gandhinagar. The land was exempted under the provisions of section 20 of the Urban Land (Ceiling and

Regulation) Act, 1976 (hereinafter referred to as the Act) for the purpose of agricultural activities as per the Government Order dated 15-9-1979 (Annexure B). At the instance of the petitioners, the said exemption was withdrawn as per the Government Order dated 15-1-1993 (Annexure C). The petitioners, thereafter filed a declaration under section 21(1) of the Act for exemption from the provisions of the Act for executing a scheme for construction of the dwelling units for the weaker sections of the society. That declaration was filed before the competent authority on 27-8-1993 but it came to be rejected by the competent authority on 21-3-1998 as per order at Annexure F. The present petition challenges the said order dated 21-3-1998.

3. The aforesaid order dated 21.3.1998 (Annexure F) was passed by the Competent Authority & Additional Collector, ULC, Ahmedabad, on the ground that the said application for exemption of under Sec.21 was not in accordance with the Government Resolution dated 6.10.1997, (Annexure 'G' to the petition), particularly Sub-clause (2) of Clause 1 of the Resolution, prescribing the time limit for making application under Sec.21 of the Act.

The aforesaid Government Resolution states that if a landholder is granted exemption in respect of agricultural land under Sec.20 of the Act prior to 31-3-1979 and thereafter the exemption for agricultural purpose is withdrawn any time after 31-3-1979, then the land holder can submit an application under Sec.21 of the Act within 1139 days from the date on which the exemption for agricultural purpose has ceased, but if the exemption for agricultural purpose under Sec.20 of the Act was granted by the Government after 31.03.1979, the landholder is not entitled to get the benefit of Rule 11(b), granting the benefit of period of 1139 days from the date of cessation of exemption under section 20.

4. Mr. M.C. Bhatt, learned counsel for the petitioners submits that application for exemption under Section 21 of the Act, can be made within the time limit which is prescribed by Rule 11 which specifically provides that, every declaration under sub-section (1) of Sec.21 by a person holding vacant land shall be made within 1139 days from the commencement of the Act, provided that, where any vacant land held by any person and exempted by sub-section (1) of Sec.20 ceases to be so exempted and as a consequence thereof the extent of such land together with any other vacant land held by him exceeds the ceiling limit, then the time within which

such person may file the declaration referred to under sub-section (1) of Sec.21 shall be 1139 days from the date on which such vacant land ceases to be so exempted. It is, therefore, submitted that in view of the clear and specific language of Rule 11(b), it is not open to the respondent to add any further condition or to take away the right conferred by Sec.21(1) read with R.11, on any extraneous ground mentioned in the aforesaid Government Resolution. Mr. Bhatt, learned advocate has relied on the decisions rendered by this Court in the case of Vijaysing D. Parmar V. Competent Authority - 1996 (2) 37(2) G.L.R. 522 and also in the case of Ravjibhai Kashibhai Patel V. Urban Land Tribunal - 1996(2) 37(2) G.L.R. 815, and also on the decision of this court in Special Civil Application No.5641 of 1996 (Annexure 'I' to the petition).

5. In reply, Mr. B.Y. Mankad, learned Assistant Government Pleader has submitted that since the petitioner was granted exemption for agricultural purpose under Sec.20(1) of the Act, in September 1979, the aforesaid clause of the Government Resolution bars the petitioners' application for exemption under sec.21 of the Act.

6. Having heard the learned counsel for the parties, this court is of the view that there is substance in the grievance being made on behalf of the petitioners. The provisions of Sec.21(1) of the Act provides that the declaration under Sec.21(1) may be made within such time, in such form and in such manner as may be prescribed, and Sec.2(j) of the Act clearly provides that "prescribed" means prescribed by the Rules made under the Act. For the purposes of computing the period for filing the application under Sec.21, one has to look at only Rule 11 and no other resolution or clarification can curtail the period prescribed therein or take away the right of the holder to apply under Sec.21(1) of the Act, on the ground that the exemption under Sec.20(1) of the Act was granted by the Government after 31.3.1979. The decision of the Division Bench in the case of Vijaysingh (supra) is applicable to the facts of the instant case.

7. This petition is accordingly allowed. The impugned order dated 21.3.1998 (Annexure 'F' to the petition) is quashed and set aside. Respondents are directed to consider the petitioners' application for exemption under Sec.21(1) of the Act, in accordance with law. Since the petitioners' application has remained pending for more than four years, the respondents shall process the same as expeditiously as possible and in any

case within four months from the date of receipt of this order.

8. Rule is made absolute to the aforesaid extent. No order as to costs.

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